

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DUBUQUE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR21-1009-CJW

EMILY ANN NELSON,

TRANSCRIPT OF
DETENTION HEARING

Defendant.

The Detention Hearing held before the Honorable Mark A. Roberts, Magistrate Judge of the United States District Court for the Northern District of Iowa, at the Federal Courthouse, 111 Seventh Avenue Southeast, Cedar Rapids, Iowa, February 11, 2021, commencing at 1:58 p.m.

APPEARANCES

For the Plaintiff: DAN CHATHAM, ESQ.
Assistant United States Attorney
111 Seventh Avenue Southeast
Cedar Rapids, IA 52401

For the Defendant: MARK C. MEYER, ESQ.
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Also present: Matt Sturdevant, U.S. Probation

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1 (The following transcript was prepared from an audio
2 recording.)

3 * * * *

4 THE COURT: The matter before the Court is
5 United States versus Emily Ann Nelson, Number 21-CR-1009.
6 The matter comes on for a detention hearing. First of
7 all, can everybody hear me?

8 MR. CHATHAM: Yes, Your Honor.

9 MR. MEYER: Yes, Your Honor.

10 THE COURT: Mr. Meyer, is there any objection
11 by the defendant to me appearing by video for the
12 purposes of our hearing this afternoon?

13 MR. MEYER: No, Your Honor, none at all.

14 THE COURT: Any objection from the government?

15 MR. CHATHAM: No, Your Honor.

16 THE COURT: We're here for a detention hearing,
17 as I mentioned, and the government has the burden. And
18 you may proceed, Mr. Chatham.

19 MR. CHATHAM: Thank you, Your Honor. First of
20 all, the United States would ask the Court to consider
21 the information contained in the pretrial services report
22 which was filed at document number 12.

23 THE COURT: Any objection?

24 MR. MEYER: No, Your Honor.

25 THE COURT: I'll let the parties know that I

1 have reviewed that in detail, and I will take formal
2 notice of it.

3 MR. CHATHAM: The United States calls Chad
4 Leitzen.

5 THE COURT: Mr. Leitzen, if you could please
6 raise your right hand, and I'll have you testify right at
7 that table so I can see you on the video.

8 CHAD LEITZEN, PLAINTIFF'S WITNESS, SWORN

9 THE COURT: Please be seated.

10 THE WITNESS: Do you want mask on or off?

11 THE COURT: That's up to you, officer, or I
12 suppose Mr. Chatham who's sitting right next to you, but
13 you don't have to take it off for my benefit.

14 MR. CHATHAM: We can leave them on is fine.

15 DIRECT EXAMINATION

16 BY MR. CHATHAM:

17 Q. Would you please state your name, and spell your
18 last for the record.

19 A. Chad Leitzen, L-e-i-t-z-e-n.

20 Q. How are you employed?

21 A. I am a police officer with the city of Dubuque
22 currently assigned as an investigator with the Dubuque
23 Drug Task Force.

24 Q. And are you the case agent in the case of United
25 States of America versus Emily Ann Nelson?

1 A. Yes, I am.

2 Q. Are you familiar with the defendant, Emily Nelson?

3 A. Yes.

4 Q. How long have you been familiar with the defendant?

5 A. I've been familiar with Ms. Nelson since
6 approximately 2016.

7 Q. And in what context did you get to know the
8 defendant?

9 A. I dealt with Miss Nelson on several occasions
10 throughout the past four and a half years including
11 stopping her on a traffic stop and taking drugs and drug
12 paraphernalia off of her as -- and also working with her
13 as a confidential informant.

14 Q. During your time getting to know Ms. Nelson, the
15 defendant here, have you known her to be a drug user?

16 A. Yes.

17 Q. What drugs?

18 A. Typically heroin.

19 Q. And in your experience is she someone who uses
20 heroin regularly?

21 A. Yes.

22 Q. And can you describe your understanding of her
23 function -- of how she's functioned in the heroin world
24 in Dubuque based on your experience and conversations
25 with her.

1 A. She is both a middler of drug deals, meaning she
2 gets drugs for other people and in doing so takes a
3 portion of those drugs or gets money for doing that, and
4 she is also a low-level drug dealer according to some
5 other witnesses that I've spoken to as well as comments
6 she's made on recordings.

7 Q. Now, did -- was there a particular incident that --
8 in late July of 2020 where Ms. Nelson came to the
9 attention of the Dubuque Drug Task Force?

10 A. Yes.

11 Q. And what incident was that?

12 A. That was the overdose of John Walgren.

13 Q. And is John Walgren someone who is also familiar to
14 you?

15 A. Yes.

16 Q. And is it your understanding that he's a somewhat
17 long-time user of heroin?

18 A. That's correct.

19 Q. Now, you said that Mr. Walgren suspected -- was
20 suspected to have overdosed?

21 A. That's correct.

22 Q. Can you tell the Court how that suspected overdose
23 came to the attention of law enforcement?

24 A. His girlfriend, Brittani Stoney, called dispatch on
25 the early morning hours of July 29, 2020, advising that

1 her boyfriend had overdosed, and law enforcement as well
2 as fire department personnel responded to the scene for
3 that report.

4 Q. Do you recall about what time that call came in?

5 A. It came in at 2:54 -- approximately 2:54 a.m.

6 Q. That's on July 29?

7 A. Correct.

8 Q. And how long was it before first responders were on
9 the scene?

10 A. It was approximately five to six minutes.

11 Q. And what happened when the first responders arrived?

12 A. First responders began assisting Mr. Walgren with
13 ventilations by using a bag valve mask since he was not
14 breathing well and also administered NARCAN to
15 Mr. Walgren.

16 Q. What is NARCAN?

17 A. NARCAN is an opioid antagonist, so it reverses the
18 effects of an opioid overdose.

19 Q. And what was Mr. Walgren's condition at the time
20 that first responders found him?

21 A. He was unconscious and cyanotic, meaning turning
22 blue, and he had very shallow breaths and was not -- was
23 not breathing well.

24 Q. And after the paramedics administered that NARCAN,
25 did Mr. Walgren's condition change?

1 A. Yes, it did.

2 Q. And can you describe what happened?

3 A. Within just a few minutes of the administration of
4 NARCAN, Mr. Walgren began breathing on his own without
5 the assistance of ventilations. He also became conscious
6 again and within just a few short minutes was actually
7 able to walk himself to the -- to the ambulance to be
8 transported to the hospital.

9 Q. Did Mr. Walgren agree to be interviewed about the
10 circumstances of him becoming unconscious that night?

11 A. Yes.

12 Q. And what did he -- and did you personally interview
13 Mr. Walgren?

14 A. I did.

15 Q. And what did he say to you?

16 A. He advised me that he had purchased heroin from
17 Emily Nelson a short time earlier and used that heroin
18 which caused him to overdose.

19 Q. And did he describe generally where that transaction
20 had occurred?

21 A. Yes, he gave me an exact description of the events
22 that took place that evening or that early morning.

23 Q. Did he state how he had gotten ahold of the
24 defendant?

25 A. Yes. He stated he contacted her via Facebook

1 Messenger.

2 Q. Did he provide you his phone and consent to search
3 his phone?

4 A. Yes, he did.

5 Q. Did -- during your search of that phone, did you
6 locate any messages that tended to corroborate
7 Mr. Walgren stating that he had met with the defendant
8 for a drug deal that day?

9 A. Yes.

10 Q. And what -- were there a lot of messages?

11 A. Yes, there were several messages that were clearly
12 messages for the two intending to meet up and then the
13 location where they were to meet and then several
14 messages advising that Mr. Walgren was on his way and he
15 was there wondering where she was, and the two eventually
16 met according to the text messages at approximately 2:00
17 a.m.

18 Q. And could you tell from the messages how much heroin
19 that Mr. Walgren was attempting to obtain from the
20 defendant?

21 A. I believe it was a half a gram.

22 Q. Did you take any other steps to corroborate the
23 information that Mr. Walgren had provided about meeting
24 with the defendant?

25 A. Yes. I read through all of the Facebook Messenger

1 messages and got the complete timeline of where he picked
2 her up and where he had advised they went to and where he
3 dropped her back off at, and I used the timeline from
4 Facebook Messenger, and I viewed the city of Dubuque
5 traffic camera video, and it corroborated exactly with
6 the timeline laid out by Facebook Messenger.

7 Q. And when you say corroborated, does that mean that
8 you were able to observe Mr. Walgren or his vehicle in
9 the locations that he had described?

10 A. Correct.

11 Q. And were you able to see whether the defendant was
12 present during any of those times where you could see
13 that vehicle?

14 A. Yes.

15 Q. And can you describe for the Court how you were able
16 to determine the defendant was present?

17 A. I was able to observe a female walk to Mr. -- to the
18 area where Mr. Walgren's car was at approximately 2:01
19 a.m. on July 29, and then they had driven directly to the
20 area of the 3100 block of White Street which is -- and
21 they parked behind a building which is just off of
22 traffic camera video. And they parked there
23 approximately 2:08, and then at 2:09 that same white
24 female walks across -- northbound across 32nd Street to
25 the intersection of 32nd and Jackson, and then she walks

1 northbound on Jackson out of sight, and then she
2 reemerges at the intersection of 32nd and Jackson at
3 approximately 2:21 a.m. and walks southbound across 32nd
4 back toward where the vehicle was parked that Mr. Walgren
5 was in. And during that walk back to Mr. Walgren's
6 vehicle, I could actually see her face on the traffic
7 camera video when it's -- when it's lit up by a -- an
8 ambient street light.

9 Q. And at the time you viewed these traffic camera
10 videos, you were familiar with the defendant?

11 A. Correct.

12 Q. So were there any additional steps taken by law
13 enforcement to try to confirm the sort of sequence of
14 events by setting up additional meetings with Ms. Nelson?

15 A. Yes.

16 Q. And can you describe for the Court what efforts were
17 made in that regard?

18 A. Approximately 12 hours after this overdose occurred,
19 during the afternoon hours of January 29, I spoke with
20 Mr. Walgren, and he met me at the -- at my office, and he
21 again tried to contact Miss Nelson at that time to try to
22 mimic -- try to set up another deal where he purchased
23 heroin from her which would mimic what happened earlier
24 that morning. However, at that time she did not answer
25 the messages, so that attempt was aborted, and the

1 following day in the evening hours of July 30, we
2 attempted the same thing again.

3 Q. And did she respond to those messages?

4 A. She did.

5 Q. And so what did the Dubuque Drug Task Force do at
6 that time?

7 A. Mr. Walgren came to the drug task force office, and
8 an undercover purchase for \$120 worth of heroin was set
9 up at that time, and his -- his person and vehicle were
10 searched for any and all forms of contraband with
11 negative results, and then he was provided with a
12 recording -- a recording device and body wire and also
13 the \$120 in order for the drug deal to take place. And
14 then he was able to eventually meet up with Emily Nelson
15 during the early morning hours of July 31.

16 Q. Was Mr. Walgren alone during this deal?

17 A. No.

18 Q. Who else was with him?

19 A. His girlfriend, Brittani Stoney, was also with him.

20 Q. And why was that?

21 A. Because she had been with him on the early morning
22 hours of July 29 when -- when he purchased the drugs from
23 Emily Nelson that he overdosed on, so we wanted to make
24 it as much as possible exactly what had occurred two days
25 earlier.

1 Q. Now, had Mr. Walgren previously been involved with
2 the Dubuque Drug Task Force?

3 A. Yes.

4 Q. Had he previously worked as a confidential
5 informant?

6 A. Yes.

7 Q. And had he previously, well, for lack of a better
8 word, stolen drugs from a buy?

9 A. Yes.

10 Q. And can you describe for the Court generally what
11 happened during that instance?

12 A. In April of 2017 Mr. Walgren had set up -- or I had
13 contacted Mr. Walgren to set up an undercover purchase of
14 heroin from one of our local drug dealers. And he agreed
15 to do so. However, unbeknownst to me at the time, he had
16 contacted the drug dealer ahead of time and asked the
17 drug dealer to split the amount of drugs that he was
18 going to be purchasing into two separate bags.

19 Mr. Walgren then met with me and was given the money
20 to purchase the drugs. He then went into the apartment
21 building and purchased the drugs from the drug dealer and
22 returned to the drug task force office and handed me the
23 one bag of drugs that we were expecting to have purchased
24 from the drug dealer. However, when he was exiting the
25 building, he actually took that second bag and dropped it

1 in the hallway on the steps and returned for it later
2 without my knowledge at the time. I didn't find out
3 until a search warrant was conducted several days later
4 at the drug dealer's house and I found that text message
5 chain in the drug dealer's phone confirming what had
6 actually happened.

7 Q. Now, based on that history with Mr. Walgren, were
8 you inclined to take extra precautions when -- or be
9 extra careful when dealing with him as a CI in this
10 instance?

11 A. Yes.

12 Q. Is that why -- one of the reasons why Ms. Stoney was
13 also involved in this deal?

14 A. Correct.

15 Q. So based on -- so what you've set out here, did --
16 the defendant had some contact then with Ms. Nelson
17 leading into the 31st?

18 A. Yes. Mr. Walgren had contact with her.

19 Q. Excuse me. Mr. Walgren. And so what happened then
20 at that point after the communications?

21 A. Mr. Walgren and Miss Stoney picked Ms. --
22 Miss Nelson up in the area of the 600 block of University
23 Avenue. And they were directed to drive to the area of
24 the 3100 block of White Street where they had parked 2
25 nights earlier. And prior to doing that, though,

1 Miss Nelson asked him to stop at a gas station so she
2 could use the bathroom which is right at the intersection
3 just a couple of blocks away. And once she returned to
4 the vehicle, they drove directly to the 3100 block of
5 White Street and parked. And at that time Miss Stoney
6 handed Miss Nelson the \$120 so she could go purchase the
7 drugs from her drug dealer. And Miss Nelson disappeared
8 into the night and never returned with money or drugs.

9 Q. And so how long did law enforcement wait in that --
10 that evening before finally calling it off?

11 A. At least an hour, probably between an hour and an
12 hour and a half.

13 Q. Were there any communications with the defendant
14 during that hour, hour and a half between Mr. Walgren and
15 the defendant?

16 A. Yes, several communications between the two.

17 Q. Any indication that she was not going to return in
18 those communications?

19 A. No. She had advised that there was a problem with
20 getting the drugs that Mr. Walgren wanted. She stated
21 there was -- she was able to get methamphetamine but not
22 heroin, and it seemed like she was making up several
23 excuses as to why she could not return with any types of
24 drugs at all, and eventually she just stopped responding
25 altogether. And once -- once we were no longer able to

1 get her to respond over the course of several minutes, we
2 decided to call off the undercover operation.

3 Q. Did law enforcement ever recover the \$120 that had
4 been given to the defendant?

5 A. No.

6 Q. I want to back up for just a second. On the night
7 of Mr. Walgren's overdose, was -- was there a search
8 actually done at the apartment after the overdose?

9 A. Yes.

10 Q. And was there any drug paraphernalia found, drugs or
11 drug paraphernalia found, in the apartment?

12 A. Yes.

13 Q. And specifically with respect to heroin, was there
14 anything found that would have been consistent with use
15 of purported heroin?

16 A. Yes. On the nightstand right next to the bed where
17 Mr. Walgren was found unconscious, there was a plastic
18 bag with -- with a powdery residue inside of it as well
19 as a syringe which Miss Stoney had advised was in
20 Mr. Walgren's hand when she found him unconscious, and
21 she put it on the nightstand.

22 Q. Was there also a spoon located?

23 A. Yes.

24 Q. And is that commonly used to inject heroin?

25 A. It's used to prepare the heroin to be drawn up into

1 the syringe so it can be injected, yes.

2 Q. And did it appear that this spoon had been used in
3 that manner?

4 A. Yes.

5 Q. So was the spoon -- were the spoon and the baggie
6 containing this substance further sent to the DCI
7 laboratory?

8 A. Yes.

9 Q. And what about the syringe?

10 A. The syringe itself was not sent because the DCI lab
11 does not accept sharps, so a syringe rinse was done on
12 the syringe, and that is where water is drawn up into the
13 syringe and then squeezed out into a small plastic
14 evidence container, and that liquid that came from inside
15 of the syringe is then sent to the DCI lab for analysis.

16 Q. Have you received results of any testing of those
17 items?

18 A. Yes.

19 Q. With respect to the purported heroin that was in the
20 baggie, what did that -- what were the results of that
21 testing?

22 A. It tested positive for -- or the findings were
23 fentanyl and insufficient for identification.

24 Q. And what about the spoon?

25 A. Also fentanyl and insufficient for identification.

1 Q. And how about the syringe rinse liquid that you've
2 described?

3 A. That was insufficient for identification.

4 Q. Do you know what that designation, "insufficient for
5 identification," means when received on a DCI lab report?

6 A. My understanding is that there's not enough of any
7 substance present for them to be able to identify what
8 the -- what the substance is.

9 Q. So are there -- to your understanding are there
10 particular cutoff levels at which the DCI laboratory will
11 report something as being in a particular sample?

12 A. Yes.

13 Q. And so if something doesn't meet the cutoff level,
14 that might be reported out as insufficient for
15 identification?

16 A. That's correct.

17 Q. Now, after this July 30 incident where the defendant
18 took the money and didn't come back, were there
19 additional attempts made by Mr. Walgren to set up a buy
20 with the defendant?

21 A. Yes.

22 Q. And over how long a period of time are we talking
23 that those attempts occurred?

24 A. They were almost daily from July 31 up until August
25 13 when she finally responded and agreed to meet.

1 Mr. Walgren had tried several times within that two-week
2 period to contact Ms. Walgren (sic) and set up another
3 undercover deal at my request.

4 Q. And so when did the -- when did the defendant
5 finally reach back out?

6 A. On August 13.

7 Q. And at that time did the task force attempt to set
8 up a controlled buy?

9 A. Yes.

10 Q. And can you describe for the Court what happened or
11 how that controlled buy was set up?

12 A. I met with Mr. Walgren, and the same precautionary
13 measures were administered that we use for all controlled
14 buys where he was searched and his vehicle was searched.
15 He was then outfitted with a body wire recording device
16 and provided with a hundred dollars in preserialized
17 United States currency, and then numerous drug task force
18 and police surveillance units were employed in
19 maintaining a visual surveillance on Mr. Walgren's
20 vehicle at all times.

21 Q. Now, you described the last time that an attempt was
22 made that Mr. Walgren's girlfriend was also present
23 during the attempted controlled buy. Was that the case
24 on the August 13 attempted controlled buy?

25 A. No.

1 Q. And so this was just Mr. Walgren himself?

2 A. Correct.

3 Q. So what happened then after those precautionary
4 measures were taken?

5 A. Mr. Walgren drove to Durango, Iowa, which is about
6 five minutes north of Dubuque, and picked up Miss Nelson
7 in a parking lot at a bar in Durango and transported her
8 back to Dubuque.

9 Q. Now, was Mr. Walgren equipped with a video and audio
10 recorder?

11 A. Yes.

12 Q. And so have you reviewed the video of that
13 encounter?

14 A. I have.

15 Q. And are you able to see who it was that Mr. Walgren
16 met with that day?

17 A. Yes, it was Emily Nelson.

18 Q. So after they went to Durango and came back, what
19 happened next?

20 A. Ms. Nelson advised Mr. Walgren that he needed to
21 drive her to her house which we knew to be 1455 Main
22 Street because she wanted to pick up some money in order
23 to be able to get drugs for herself at the same time that
24 she was getting drugs for Mr. Walgren, though he drove
25 her directly to the intersection of 15th and Main which

1 is a half a block away from her apartment, and he parked
2 in a parking lot, and she got out and walked towards her
3 apartment.

4 Q. And did she go inside?

5 A. Yes.

6 Q. How long was she inside?

7 A. She was gone for approximately four or five minutes.

8 Q. And then what happened next?

9 A. She returned to Mr. Walgren's vehicle and directed
10 him to go to the same place as before I believe is the
11 question he asked. And at that time they talked about
12 where he would park, and he told her -- he had mentioned
13 parking behind the auto parts store on White Street which
14 is where they -- where they agreed he should park.

15 Q. At any point during this conversation between the
16 defendant and Mr. Walgren, did they acknowledge the prior
17 incident where she had taken off with the money?

18 A. There was -- there was mention of him not -- not
19 trusting her with money once they arrived at the location
20 because once they arrived and parked on White Street,
21 prior to her getting out of the vehicle, she asked
22 Mr. Walgren for his money, and he told her that he could
23 not give her the money until he had drugs first because
24 of what happened last time.

25 Q. And so what did the defendant agree to do then based

1 on that conversation?

2 A. She stated that she was just going to go to her
3 dealer and get her own drugs then rather than taking
4 Mr. Walgren's money to buy him drugs, and at that time
5 Mr. Walgren asked her if he could just buy a little bit
6 of what she got from her purchase, and she stated that he
7 could.

8 Q. So what happened next?

9 A. Ms. Nelson exited Mr. Walgren's vehicle and while
10 under surveillance walked directly to the back door of 95
11 Milwaukee Street, and she went inside, and she was in
12 there for approximately three minutes and then returned
13 directly to Mr. Walgren's vehicle and had a bag of drugs
14 on her at that time.

15 Q. And how do you know she had a bag of drugs on her at
16 that time?

17 A. She had confirmed with him that she had gotten what
18 she was after and also that she needed to get high at
19 that time, so she wanted to take a shot, and she asked
20 Mr. Walgren if he wanted a shot as well. And he stated
21 not at that time but had agreed to give her \$20 for a
22 shot. She -- Ms. Nelson stated that she had cleans which
23 she was referring to clean needles, and she then reached
24 into her bra and removed two syringes from that area, and
25 she began preparing the suspected heroin that she had

1 purchased for injection stating that she needed to get
2 high and asked Mr. Walgren to drive to a safe place. And
3 they ended up driving about five or six blocks south and
4 parking in an alley east -- I believe it was east of the
5 2500 block of Jackson if I'm not mistaken, east or west,
6 but they were parked in an alley off of Jackson Street.
7 And we could see on the -- on the body wire that she was
8 preparing the drugs to be injected, she was preparing
9 them in the spoon, and it was at that time that Sergeant
10 Pape who's the director of the drug task force advised
11 that we needed to stop the undercover operation at that
12 point and move in to make the arrest, we couldn't let her
13 use because of the extreme risk. And as officers were
14 moving in, you could actually see her pull a hair tie up
15 on to her forearm to help expose the veins. And as
16 officers were moving in, she actually did inject the
17 needle into her hand and plunge it just prior to officers
18 pulling her out of the vehicle. And then she was -- she
19 was taken into custody at that point.

20 Q. Was the vehicle searched?

21 A. Yes.

22 Q. And were there any drugs found in the vehicle at
23 that time?

24 A. Yes.

25 Q. Any drug paraphernalia?

1 A. Yes.

2 Q. Can you describe for the Court what was found and
3 where?

4 A. On the passenger side floorboard there was a small
5 plastic bag with a small amount of a chunky -- like a
6 tan, chunky substance in it that was suspected to be
7 heroin. There was also a spoon with a -- with a cotton
8 ball in it, and right along the side of the -- the right
9 side of the passenger seat between the passenger seat and
10 the door there was a used syringe, and in -- on the
11 passenger seat there's a -- there's a small void or a
12 little gap between the cushions. Like there's a front
13 and a back cushion with a small void between the two.
14 And down in that void was a second syringe that appeared
15 to be unused.

16 Q. And now, is that the seat that Ms. Nelson was
17 encountered in by police?

18 A. Yes.

19 Q. Were there any other drugs found in the vehicle?

20 A. No.

21 Q. Was Mr. Walgren searched after this incident?

22 A. Yes.

23 Q. Any drugs found on his person?

24 A. No.

25 Q. Was the substance in the baggie that was found in

1 the car sent to the DCI laboratory?

2 A. Yes.

3 Q. And what were the results, if any, of the testing?

4 A. It was the finding for fentanyl, insufficient for
5 identification, and instrumentally consistent with
6 acetaminophen.

7 Q. And how about the metal spoon? Was that also sent
8 to the DCI laboratory?

9 A. Yes.

10 Q. And was it tested?

11 A. Yes.

12 Q. Any findings there?

13 A. Those findings were also fentanyl, insufficient for
14 identification, and instrumentally consistent with
15 acetaminophen.

16 Q. And was there a syringe rinse done of the syringe
17 that appeared to have been used?

18 A. Yes.

19 Q. And was that liquid sent to the laboratory and
20 tested?

21 A. Yes.

22 Q. What were the results of that testing?

23 A. That was insufficient for identification.

24 Q. Was it insufficient for identification or no
25 controlled substance found?

1 A. Yes, that's correct. That was no controlled
2 substance found. That's correct.

3 Q. So at the time the defendant was taken into custody,
4 was she read her Miranda rights?

5 A. Yes.

6 Q. And did -- did you actually question her?

7 A. Yes.

8 Q. Did she make any statements about what she was doing
9 in the vehicle that day?

10 A. She did, but they were obviously not truthful. She
11 had stated that she was not -- she didn't have any drugs
12 on her and there were no drugs in the car that she knew
13 of. I had asked her if she used drugs, and she stated
14 that she -- I believe she stated she didn't remember,
15 said she didn't feel high.

16 Q. Was there -- did you have any indication -- based on
17 her interaction with you, did she seem like she was
18 significantly under the influence at the time you were
19 talking with her?

20 A. No, she didn't.

21 Q. Does she eventually admit to what had happened
22 leading up to law enforcement coming to the vehicle that
23 day?

24 A. Yes.

25 Q. And can you describe for the Court what she said

1 about what had been going on?

2 A. She eventually admitted that she had purchased
3 heroin that day and purchased it from a girl that she
4 knows only as Home Girl, and she also pointed out a photo
5 of the house that she had gone into at 95 Milwaukee
6 Street that officers had observed her go into stating
7 that's where she had gotten it.

8 Q. Did she state anything about what she was -- about
9 any intention of what she was going to do with the
10 remaining purported heroin?

11 A. When I asked her if she was planning on selling any
12 to Mr. Walgren, she stated that she had thought about it
13 but she hadn't done it and that they had -- they had
14 talked about it but she said that she only -- she was
15 only thinking about it.

16 Q. Now, earlier you testified that there was a recorded
17 statement by the defendant about being a dealer or having
18 a larger quantity of heroin. Do you recall that
19 testimony?

20 A. Yes.

21 Q. Was there actually a conversation between the
22 defendant and Mr. Walgren during the August 13 deal where
23 that issue came up?

24 A. Yes.

25 Q. Can you describe for the Court what the defendant

1 said?

2 A. After Miss Nelson had come out of her apartment at
3 1455 Main Street and returned to Mr. Walgren's vehicle
4 and they began driving towards the 3100 block of White
5 Street, during that trip, Ms. Nelson advised Mr. Walgren
6 that her old plug, meaning her old drug dealer, had just
7 been in town and offered her 7 grams for \$400, but she
8 stated she had fallen asleep and missed the opportunity
9 to get it and he went back to Chicago. She stated that
10 he told her she could come to Chicago if she wanted it
11 but she had not done so.

12 Q. Now, the quantity of heroin, that 7 grams, is that a
13 significant amount of heroin in your -- in your
14 experience?

15 A. Yes, it is.

16 Q. How much is -- how much heroin does a typical user
17 use at a given time?

18 A. A typical user will buy anywhere from maybe 0.1
19 grams up to maybe 0.5 grams to use for themselves, but
20 that would -- that would probably last an entire day.

21 Q. Is it common for heroin users to buy in bulk and
22 then save it for long periods of time and then use out of
23 a stash all on their own?

24 A. No.

25 Q. So based on that experience, what -- would the

1 quantity of seven grams be consistent with someone who
2 was buying to redistribute to others?

3 A. Correct.

4 Q. And did Mr. Walgren and Ms. Nelson actually have a
5 bit of a conversation about that prospect?

6 A. Yes, they did.

7 Q. About -- was that Mr. Walgren stating an intention
8 to potentially buy drugs from her if she were to obtain
9 that quantity?

10 A. Yes. He asked if he would get a good deal if she
11 were to have that, and she stated yes but she didn't have
12 it.

13 MR. CHATHAM: No further questions.

14 THE COURT: Thank you, Mr. Chatham.

15 Mr. Meyer?

16 CROSS-EXAMINATION

17 BY MR. MEYER:

18 Q. Officer, so it appears that Emily has primarily
19 lived in Dubuque, the Dubuque area, for the last several
20 years; is that correct?

21 A. To my knowledge she has, yes.

22 Q. To your knowledge, yeah. And that -- your
23 information is that she is a low-level dealer? Is that
24 consistent with being a heroin addict who needs to buy
25 some for theirselves and in order to do that buys a larger

1 quantity and sells some of it?

2 A. Correct.

3 Q. Okay. And your only -- the only information you had
4 that she would buy a larger amount of that was when she
5 said that she had the possibility of buying seven grams;
6 is that correct?

7 A. Actually we tried setting up a different deal
8 several months earlier with -- with a different
9 confidential informant where the confidential informant
10 advised she wanted to go, they thought, to Platteville to
11 pick up \$1,200 worth of heroin. Instead it turned out
12 sounded like the heroin was probably in Chicago and that
13 deal fell through. But either way, the deal we were
14 trying to set up with her was for her to be transported
15 to pick up a larger amount of heroin.

16 Q. Okay. But as you say, that fell through.

17 A. Correct.

18 Q. And then the other seven-gram possibility didn't
19 occur either?

20 A. Correct.

21 Q. During the time that you have known about Emily, has
22 she ever had any problems in Manson, Iowa?

23 A. Any problems there?

24 Q. Yes, drug-related problems. I should be more
25 specific.

1 A. None that I'm aware of.

2 Q. Or any problems at all?

3 A. None that I'm aware of.

4 Q. Okay. And the -- the incident where Mr. Walgren
5 overdosed, you indicated that there was a heroin-like
6 substance found near the place where he apparently
7 overdosed; is that correct?

8 A. Correct.

9 Q. Was that in a bag?

10 A. Yes.

11 Q. Were there other bags found in the residence as well
12 of controlled substances?

13 A. No.

14 Q. Just the one bag that was close to the syringe?

15 A. Correct. There was a -- there was some foil,
16 tinfoil, found in the living room garbage I believe is
17 where that was located that tested positive for
18 methylenedioxymethamphetamine.

19 Q. Okay. Was there any methamphetamine in -- well, let
20 me back up. Mr. Walgren, was he ever tested? Was there
21 any drug test done of him on -- in connection with the
22 incident where he overdosed?

23 A. Nope. He refused all medical treatment.

24 Q. So he didn't go to the hospital.

25 A. He did go to the hospital, but once there, he

1 refused any medical treatment.

2 Q. And you said he walked there on his own?

3 A. He walked to the ambulance.

4 Q. The ambulance.

5 A. To be -- to be transported.

6 Q. All right. And how is he doing now?

7 A. To my --

8 Q. Physically.

9 A. To my knowledge he's fine.

10 Q. So no long-lasting effects?

11 A. Not that I'm aware of.

12 Q. As a matter of fact, it was a pretty short-lasting

13 effect. You said as soon as he took the NARCAN, then he

14 began to breathe on his own pretty quickly?

15 A. Shortly after that, yes.

16 Q. Okay. Then the other -- last question I want to ask

17 is the incident where there was the overdose that's the

18 basis for the charge was in July of 2020?

19 A. July 29, 2020.

20 Q. All right. The end of July?

21 A. Correct.

22 Q. And then for a while there were attempts to set up a

23 deal with Emily?

24 A. Correct.

25 Q. At least through September of 2020?

1 A. August.

2 Q. August, August of 2020.

3 A. It was approximately two weeks afterwards that it
4 occurred.

5 Q. Okay. And then something happened in August that
6 led her to be arrested? Did you discuss that?

7 A. I'm sorry. Could you repeat that?

8 Q. According to the pretrial services report that --
9 oh, I take it b -- yeah. No. August 19, August 18,
10 Emily was arrested and taken into custody and charged
11 with a controlled substance violation in Dubuque County?

12 A. I don't know.

13 Q. You don't know?

14 A. I don't.

15 Q. Okay. And then apparently remained in the community
16 after posting a bond at least until November of 2020; is
17 that correct?

18 A. I'm not sure what day she got picked up on her
19 warrant.

20 Q. All right. Was it like months after this incident
21 that led to the filing of these charges?

22 A. It would have been at least a couple of months. I
23 believe it was either some time in mid to late October or
24 early to mid November that she got picked up. I just
25 don't know the exact date. So it was -- it was a few

1 months after the incident here in question.

2 Q. All right. And when she got picked up, it was on
3 state charges; right?

4 A. For whatever the warrant was for, yeah. I'm not
5 aware of the -- the actual charge.

6 Q. So has she been in custody since November, late
7 October, November in state court until these charges were
8 filed here in federal court?

9 A. Yes.

10 Q. So I'm assuming then that it didn't appear that it
11 was thought that Emily was too dangerous to leave on the
12 street for at least several months after this incident
13 that led to the charges.

14 A. That's not my decision as to when she gets out.

15 Q. No. But your decision was not to -- well, let me
16 ask you this. When did the Dubuque task force come in
17 contact with the federal law enforcement or U.S. attorney
18 in connection with this case?

19 A. Immediately in contact with them. Are you talking
20 about when we got the indictment?

21 Q. Well, no. You answered the -- the first answer was
22 what I was wondering about is that -- is that there's
23 been federal involvement or at least knowledge since the
24 end of July of 2020 regarding this incident?

25 A. Correct.

1 Q. That we're -- the incident that was charged in the
2 indictment; right?

3 A. Correct.

4 Q. And it was only in late October, November that she
5 was actually taken into custody and stayed there.

6 A. Correct.

7 MR. MEYER: That's all the questions I have.
8 Thank you.

9 THE COURT: Thank you, Mr. Meyer.
10 Mr. Chatham, any redirect?

11 MR. CHATHAM: Just briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. CHATHAM:

14 Q. With respect to questions that Mr. Meyer asked you,
15 was the defendant actually taken into custody after the
16 August 13 incident that you've described?

17 A. Yes.

18 Q. And then later she was -- and so she was initially
19 taken into custody on a state charge related to that?

20 A. Correct.

21 Q. And then did she post bond on that to your
22 knowledge?

23 A. I'm not sure if she posted bond or if she had a
24 signature bond. Either way she bonded out.

25 Q. And so she was under state pretrial supervision

1 during that time to your knowledge?

2 A. Correct.

3 Q. I also want to talk about the question that counsel
4 had about how Mr. Walgren's doing now and whether he had
5 any long-lasting effects. Are you aware, was a medical
6 expert consulted in this case related to Mr. Walgren's
7 condition at the time he was encountered by first
8 responders on his overdose incident?

9 A. Yes.

10 Q. And was that specifically a medical expert by the
11 name of Joshua Pruitt with the -- with St. Luke's here in
12 town?

13 A. Correct.

14 Q. And is Dr. Pruitt also a medical examiner?

15 A. Yes.

16 Q. And did Dr. Pruitt review reports and videos related
17 to Mr. Walgren's overdose event to your knowledge?

18 A. Yes.

19 Q. And have you reviewed Dr. Pruitt's report?

20 A. I have.

21 Q. Did he give an opinion as to whether Mr. Walgren
22 suffered a serious bodily injury --

23 A. Yes, he --

24 Q. -- at that time?

25 A. Yes, he did.

1 Q. And what was that opinion?

2 A. The opinion was that he did suffer a serious bodily
3 injury and, without the assistance of medical
4 professionals, would have likely suffered death.

5 Q. And was that because of the -- the sort of rapid
6 onset of the severe conditions that Mr. Walgren
7 experienced?

8 A. Yes.

9 Q. Or immediately lost consciousness and suffered
10 significant breathing reduction?

11 A. Correct.

12 MR. CHATHAM: No further questions.

13 THE COURT: Thank you, Mr. Chatham.

14 Mr. Meyer, anything else?

15 MR. MEYER: Just one -- one more question.

16 RECROSS-EXAMINATION

17 BY MR. MEYER:

18 Q. It's my understanding then that Dr. Pruitt -- is
19 that -- Pruitt is the correct name?

20 A. Correct.

21 Q. -- rendered his opinion without the benefit of any
22 knowledge of what substances were actually in
23 Mr. Walgren's blood?

24 A. Correct.

25 Q. Okay.

1 MR. MEYER: That's all, Your Honor.

2 THE COURT: Thank you, Mr. Meyer.

3 Mr. Chatham?

4 FURTHER REDIRECT EXAMINATION

5 BY MR. CHATHAM:

6 Q. With respect to that, did -- was Dr. Pruitt provided
7 with lab reports for the substances that were found in
8 the -- in the apartment?

9 A. Yes.

10 Q. And in the report does Dr. Pruitt discuss what types
11 of -- or I guess what could have caused Mr. Walgren to
12 have lost consciousness?

13 A. Yes.

14 Q. And what did the report opine as to what could have
15 caused that particular injury that Mr. Walgren suffered?

16 A. He opined that it was the opioid that caused the
17 serious bodily injury, and he did make mention of the
18 methylenedioxymethamphetamine as well but stated based on
19 the circumstances surrounding the overdose and the
20 positive reaction to the NARCAN which only reverses
21 opioids that the clinical picture was that opioids were
22 the cause of the -- the overdose causing the serious
23 bodily injury.

24 Q. And just to be clear, the only opioid found in the
25 apartment was the fentanyl that you've described?

1 A. Correct.

2 MR. CHATHAM: Nothing further.

3 THE COURT: Thank you, Mr. Chatham.

4 Mr. Meyer?

5 MR. MEYER: Nothing further, Your Honor.

6 THE COURT: Mr. Chatham, any additional
7 evidence or proffer you'd like to make this afternoon?

8 MR. CHATHAM: No, Your Honor.

9 THE COURT: Mr. Meyer, do you have any evidence
10 or a proffer you'd like to make?

11 MR. MEYER: Judge, the only thing, I think
12 you've probably seen this, but I guess I should find out
13 for sure is Mr. Sturdevant sent counsel an e-mail this
14 morning with sort of a supplement to his pretrial
15 services report regarding being contacted by
16 Miss Nelson's father, and I'm just checking to make sure
17 you're aware of that because that's where we propose
18 Miss Nelson be released on conditions.

19 THE COURT: Let me look to make sure I have the
20 same thing you're talking about.

21 MR. MEYER: It was just addressed to me and
22 Mr. Chatham, so you might not have seen it, but I don't
23 know. Mr. Sturdevant could probably let you know if he
24 forwarded that to your office as well.

25 THE COURT: I have it. Thank you.

1 MR. MEYER: Okay. So we just wanted to make
2 sure that -- that's why I asked the questions about
3 Manson, Iowa. That's where Mr. -- Emily's father
4 resides, and that's where we propose to have her released
5 to.

6 THE COURT: Very good. Then let's proceed to
7 argument if either party would like to make one. We can
8 begin with you, Mr. Chatham.

9 MR. CHATHAM: Thank you, Your Honor. I'll
10 start from the point here that under 3142(e) this is a
11 rebuttable presumption case, so if there's probable cause
12 to believe the defendant committed the offense in
13 particular, the offenses of possession with intent to
14 distribute controlled substance and distribution of
15 controlled substance resulting in serious bodily injury
16 as alleged in the indictment, that there's a rebuttable
17 presumption that no condition or combination of
18 conditions will reasonably assure her appearance and the
19 safety of the community.

20 Here the grand jury has returned an indictment on
21 both of those counts, and additionally we believe the
22 evidence presented today also provides more than probable
23 cause for each of those offenses. And so we believe this
24 is a rebuttable presumption case.

25 Looking at the 3142(g) factors here, this is a case

1 involving a controlled substance, not just any controlled
2 substance. It involves fentanyl and not just simply
3 involving fentanyl. It involves an incident where the
4 defendant distributed fentanyl and another individual
5 almost died. And so it is a very serious case.

6 I understand Mr. Meyer's comments and anticipated
7 argument about this is an individual who uses drugs, and,
8 you know, to support her own habit she deals. Frankly, I
9 don't think that cuts very well in a defendant's favor
10 who's expecting to or attempting to be released on to
11 pretrial release because that's how the defendant
12 supported her habit. She puts other people in danger
13 when she uses drugs in this fashion. She's not only
14 getting drugs for herself, she's getting drugs for other
15 people, and there are consequences for those other people
16 as a result of the defendant's conduct.

17 And so the fact of her being a user in this case
18 actually causes a danger to the community because her
19 modus operandi for getting drugs is to get drugs for
20 herself and other people, thereby putting other people in
21 danger.

22 We believe the weight of the evidence here is very
23 strong on all of the counts. This defendant is -- first
24 of all, we have Mr. Walgren who's stated -- given the
25 outline of the events of the 29th, and those -- that

1 outline that he gave was corroborated by messages from
2 Mr. Walgren's phone involving the defendant corroborated
3 by traffic camera footage, independent traffic camera
4 footage, that shows the defendant getting into
5 Mr. Walgren's vehicle, driving to the location where
6 Mr. Walgren described they drove to get the drugs.

7 And then it's further corroborated by the drug
8 evidence that was found at the scene which is consistent,
9 fentanyl being an opioid, consistent with the transaction
10 that Mr. Walgren described, also consistent when we fast
11 forward to the August 13 incident that is set up in much
12 the same way that the July 29 incident occurred. The
13 drugs that came back in that also were fentanyl in the
14 same way that the drugs from the 29th, so that's
15 additional corroboration there.

16 The fact that law enforcement was able to
17 reconstruct the -- what was seen on the body camera -- or
18 excuse me, on the traffic camera from July 29, were able
19 to reconstruct that not once but twice, at least
20 partially twice on the 30th when they had the attempted
21 controlled buy where the defendant ran off with the
22 money, everything up to that point appeared very similar
23 to what had happened just the day before and then
24 likewise on August 13 very similar fact pattern where
25 Mr. Walgren reaches out through the same medium to the

1 same person and then ends up with the exact same drugs in
2 effectively the same location.

3 So we believe the evidence here is very strong that
4 the defendant committed all of the charge -- or all of
5 the crimes alleged in the indictment.

6 When we look at the history and characteristics of
7 this defendant, they are not favorable for release. This
8 defendant does have a lifelong -- apparently lifelong
9 connection to the state of Iowa. She's lived in a few
10 different towns in Iowa. She does have family in Iowa,
11 her stepfather in Manson who I understand the defendant
12 considers to be her father because that's basically been
13 the father she's known her entire life.

14 That -- and I -- from review of that e-mail, I
15 understand Mr. Nelson's statement that he will basically
16 do the best he can which is all anyone can be asked to
17 do, but the problem with that is that there are no
18 guarantees with this particular defendant that she would
19 abide by anything that her stepfather told her to do or
20 anything that this Court would tell her to do.

21 And that's amply shown by the remainder of the
22 pretrial services report. This is a defendant who has
23 not held steady jobs despite the fact that she is 28
24 years old. She's -- her employment has been sporadic at
25 best. There's no real indication here as to what she's

1 done for money for her adult life other than the
2 testimony that indicates that she's been involved in
3 selling and middling drugs.

4 Additionally, the defendant has only had sporadic
5 times where she has stayed with different people. It's
6 not a situation where she's been in one location for
7 several years and not sort of moved on to the next thing,
8 so I don't -- I don't believe as well intentioned as
9 Mr. Nelson may be that he would have the power to keep
10 this defendant on the straight and narrow while she's on
11 pretrial release.

12 That is further demonstrated by the defendant's
13 prior record. Now, this defendant's prior record is
14 somewhat indicative of an individual who has a severe
15 drug problem, and I think that's fairly clear based on
16 the testimony today and the other information in the
17 pretrial services report.

18 I think it's somewhat telling or somewhat concerning
19 here that the defendant -- and I understand it's at
20 request of defense counsel but a defendant who refuses to
21 answer questions about her substance abuse history while
22 simultaneously proposing that she be released to pretrial
23 supervision while not giving the Court enough information
24 to determine what would be appropriate conditions of
25 release, I think that's a problem, particularly in a case

1 like this where there are other extreme red flags about
2 significant drug use.

3 So in addition to just the number of charges that
4 involve theft and possession of drugs and drug
5 paraphernalia, providing false information certainly from
6 2018 at paragraph 5 on page 5 of the pretrial services
7 report, the fact that she's falsely identifying herself
8 to the police, an additional theft charge, aggravated
9 misdemeanor theft charge from Dubuque County from 2018, a
10 theft in the fifth degree charge from 2018, another th --
11 a theft in the third degree charge from 2020. Some of
12 those charges resulted in convictions. Others did not.

13 But a fairly common theme throughout the defendant's
14 criminal history is her history of failing to appear.
15 She failed to appear first in September of 2016 and had a
16 bond forfeiture in Dubuque County on a driving while
17 license denied, suspended, cancelled, or revoked. There
18 was a second failure to appear that's reflected at both
19 paragraphs 3 and 4. It appears that those were sort of
20 at the same time, failed to appear for a hearing in April
21 of 2017, failed to appear for another hearing as
22 reflected in paragraph 5 in July of 2018, failed to
23 appear for a pretrial conference, additionally, in August
24 of that same year, another failure to appear for failing
25 to appear for a pretrial conference in August of 2018.

1 That appears also related to the conviction or -- yes,
2 the conviction and prosecution in paragraph 7.

3 And then perhaps most tellingly, Mr. Meyer asked
4 questions of the witness about this defendant's danger
5 and appearing to implicate the idea that because she
6 wasn't taken into immediate custody after August 13 and
7 remaining in custody that she's somehow not perceived to
8 be a danger.

9 I think it's also telling when it comes to the
10 defendant's -- the reasonable -- whether we could
11 reasonably assure that she would appear is that after
12 this, she was given an opportunity such that that's what
13 this was that she gets arrested, knows that she's got
14 these charges potentially coming, she's talked with the
15 task force about an arrest, and she fails to appear for a
16 pretrial conference in November of 2020 and has a warrant
17 issued for her that eventually gets executed on November
18 11.

19 So -- so her fifth -- what appears to be fifth
20 failure to appear occurred three months ago. So based on
21 this information, this defendant is a very high risk not
22 only to be a danger to the community as discussed before
23 but also to not appear for all court proceedings as
24 required.

25 This is a very serious offense this defendant is

1 facing. She faces a 20-year mandatory minimum on the
2 first count based on the injury that was -- that occurred
3 to Mr. Walgren. So the incentive for this defendant to
4 not appear should she choose to go that route would be
5 very high.

6 So we believe based on all the facts and
7 circumstances presented here today that there is no
8 condition or combination of conditions that would
9 reasonably assure this defendant's appearance in court as
10 required or the safety of the community, and we would ask
11 that she be detained.

12 THE COURT: Thank you, Mr. Chatham.

13 Mr. Meyer?

14 MR. MEYER: I would say, Your Honor, that any
15 time -- well, my -- my dealings with people who are
16 heroin addicts, their life is really messy. I mean, it's
17 not easy to function in society when you're addicted to
18 particularly heroin, other substances as well. So it's
19 not surprising that Emily has some convictions for using
20 heroin and other substances and stealing, taking things
21 presumably to get money to buy more drugs or even going
22 in to buy some drugs to sell maybe to another person so
23 she'd have enough for herself. If nothing else, one user
24 is going to feel compassion and sympathy for another
25 user. I mean, that's -- it's not that they're evil

1 people. It's just that -- the circumstances that they
2 find themselves in.

3 So our proposal is to take her completely out of the
4 environment that has made her life so messy and put her
5 in the custody of her stepfather who took this very
6 seriously, said after consulting with his wife who is
7 concerned about, you know, Emily's associates putting the
8 other children in harm's way, they were willing, knowing
9 her, to take her back in but on very strict rules
10 including no cell phone in Manson, Iowa, far from Dubuque
11 County where she's run into some problems.

12 Now, given that she's never had any issues -- I
13 don't know, frankly, how long she's lived in Manson but
14 never had any issues in Manson and her stepfather is
15 willing to take her in under those conditions, I would
16 ask the Court to seriously consider releasing her to the
17 stepfather on whatever rules and conditions the Court
18 felt is necessary. That's all, Your Honor.

19 THE COURT: Thank you, Mr. Meyer.

20 Ms. Nelson, I'll probably direct most of my remarks
21 to you at our hearing this afternoon as I make my
22 decision. The lawyers are very familiar with these
23 proceedings, but I can understand why it might be strange
24 for someone in your position at a hearing like this. One
25 thing I hope is obvious, that this isn't your trial

1 because there's no jury there in the courtroom. I think
2 it's probably less obvious but still important that when
3 you do go to your jury trial the jury's never going to
4 hear anything that I have to say about the strength of
5 the evidence or what I have to say about whether you
6 present a danger to the community or whether you pose a
7 risk of not showing up for hearings in the future, things
8 like that. You're innocent until proven guilty. And
9 like I say, the jury's never going to hear what I think
10 or say about the evidence in this case.

11 My job is to determine if you should be released
12 pending that trial. And normally, as I mentioned at the
13 beginning of the hearing, the government has the burden
14 of proving that you're a risk of nonappearance by what's
15 called a preponderance of the evidence. That's like the
16 scales of justice you sometimes see in a sculpture on a
17 courthouse wall. And if the scales tip just slightly in
18 favor of the government, then it's met that burden. They
19 have to prove you're a danger by clear and convincing
20 evidence.

21 Your case is a little different because there's a
22 rebuttable presumption because of what you're charged
23 with, as Mr. Chatham indicated, that you should be
24 detained in this case.

25 I think rebuttable presumption is a tough concept to

1 explain to nonlawyers, but what I usually say to people
2 is it means that the government has kind of a head start
3 because of the nature of what you're charged with in
4 proving that you should be detained.

5 What I tend to do is look at the factors that
6 Mr. Meyer and Mr. Chatham have been talking about today
7 to determine whether you should be detained regardless of
8 that presumption or not.

9 The first is the nature and circumstances of the
10 offense charged including whether the crime involved
11 violence or a firearm. I'm glad to say it didn't involve
12 violence or a firearm, and you're not a violent person
13 based on what I can see in the record, although there is
14 obviously something dangerous about dealing and using
15 fentanyl. That's -- that's obvious. What happened to
16 Mr. Walgren is the danger that dealing or sharing drugs
17 poses.

18 In terms of the weight of the evidence, I agree with
19 Mr. Chatham. The weight of the evidence is strongly
20 against you in terms of what's been charged in the
21 indictment based on the video evidence and your
22 interaction with Mr. Walgren, so that's a factor that
23 weighs against you in this case.

24 Turning to your history and characteristics,
25 obviously you have prolonged ties to the Dubuque

1 community and to Iowa in general. But you haven't had
2 employment that's significant as an adult. It seems from
3 what we can tell you've relied on others or you've been
4 dealing -- dealing drugs.

5 You didn't give information to the probation office
6 about your drug history, and I don't hold it against
7 people who don't want to talk to the government. That's
8 your Fifth Amendment right. It does kind of leave us
9 somewhat speculating about your drug history, but it's
10 not too speculative really. Seems to be fairly obvious
11 that you do have a serious addiction problem. And I try
12 to be clear to people that this Court isn't in the
13 business of locking people up because they have addiction
14 problems.

15 But the danger that that addiction presents to the
16 community and the risk of you not appearing is certainly
17 my concern and the Court's concern, and I think the lack
18 of treatment, the absence of a treatment option, it's
19 certainly laudable that your stepfather has made his home
20 available to you even under these circumstances, but
21 that's not exactly a secure or an inpatient facility
22 which apparently is -- at least in my view is something
23 you would need to deal with the serious addiction problem
24 you have.

25 Turning to your risk of nonappearance more

1 specifically, you have failed to appear on charges in the
2 past. I do believe you do pose a risk of danger to the
3 community because of your drug habit, your interacting
4 with felons on a regular basis in order to obtain heroin,
5 and then sharing it or dealing it to others as we see in
6 this case does pose a danger to the community.

7 So based on the totality of the evidence before me,
8 I find the government -- first of all, I find that you
9 have not rebutted the presumption in this case. But even
10 if I'm wrong about that, based on the totality of the
11 evidence before me, I find the government has carried its
12 burden of showing by a preponderance of the evidence that
13 the defendant poses a risk of nonappearance and by clear
14 and convincing evidence the defendant poses a danger to
15 the community.

16 I conclude there is no condition or combination of
17 conditions I could impose with which the defendant would
18 comply and appear as required at trial and hearings in
19 this matter and that would ensure the safety of the
20 community.

21 I, therefore, order the defendant be committed to
22 the custody of the attorney general until trial in this
23 matter.

24 Ms. Nelson, you don't have to agree with my decision
25 or what I -- my view of the facts in this case. In fact,

1 you have a right to appeal my decision to the district
2 court judge that's assigned to your case, and you have 14
3 days from today to file such an appeal. Do you
4 understand your right to appeal my decision, Ms. Nelson?

5 THE DEFENDANT: Yes, Your Majesty.

6 THE COURT: Is there anything further on behalf
7 of the United States?

8 MR. CHATHAM: No, Your Honor.

9 THE COURT: Anything further on behalf of
10 defendant, Mr. Meyer?

11 MR. MEYER: No, Your Honor. Thank you all.
12 That will conclude our hearing.

13 (The foregoing hearing was
14 concluded at 3:10 p.m.)

15 * * * *

16 (This concludes the transcript of the audio recording.)
17
18
19

20 CERTIFICATE

21 I certify that the foregoing is a correct
22 transcript to the best of my ability from the digital
23 recording of proceedings in the above-entitled matter.

24 S/Shelly Semmler 3-8-22
25 Shelly Semmler, RDR, CRR Date

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